

Geri N. Kahn (CSB #148536)
400 Montgomery Street, Suite 810
San Francisco, CA 94104
Tel. (415) 397-5446
Fax (925) 889-4379
Email: gkahn@pacbell.net

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Xi ZHAO,) Case No.: 07 3800 JL
Plaintiff,) PLAINTIFF'S COMPLAINT FOR WRIT
vs.) IN THE NATURE OF MANDAMUS
Michael Chertoff, Secretary, Department of)
Homeland Security; Emilio T. Gonzalez,)
Director, United States Citizenship and)
Immigration Services; Alberto Gonzales,)
Attorney General; David Roark, Director,)
Texas Service Center, United States)
Citizenship and Immigration Services; and)
Robert Mueller, Director of Federal Bureau)
of Investigation.)
Defendants.)

Plaintiff, Xi ZHAO, by and through his undersigned attorney, sues Defendants and states as follows:

1. This action is brought against the Defendants to compel action on his application for lawful permanent resident status properly filed by the Plaintiff. The application was filed and remains within the jurisdiction of the Defendants, who have improperly withheld action on this application to Plaintiff's detriment.

PARTIES

2. Plaintiff Xi ZHAO (A99 363 445) is a native and citizen of the People's Republic of China. He filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on November 29, 2005 and is seeking to become a lawful permanent resident as a derivative beneficiary of his wife's adjustment application based on an approved I-140 Petition for Alien Worker.
 3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security (hereinafter "DHS"), and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the DHS. 8 U.S.C, §1103(a); 8 C.F.R. §2.1.
 4. Emilio T. Gonzalez is the Director of the United States Citizenship and Immigration Services (hereinafter "USCIS"), an agency within the DHS to whom the Secretary's authority has in part been delegated and is subject to the Secretary's supervision. Defendant Director is generally charged with the overall administration of benefits and immigration services. 8 C.F. R. §100.2(a).
 5. Defendant David Roark, Texas Service Center Director, is an official of the USCIS generally charged with supervisory authority over all operations of the USCIS within her district with certain specific exceptions not relevant here. 8 C.F.R. §100.2(d)(2)(ii). As will be shown, Defendant Director is the official with whom Plaintiff's Application for Adjustment of Status remain pending.
 6. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigations (FBI), the law enforcement agency that conducts security clearances for other U.S. government agencies, such as the Department of State. As it will be shown,

1 Defendant has failed to complete the security clearances on Plaintiff's case hence
2 causing delay in Plaintiff's Application for Adjustment of Status.

3 **JURISDICTION**

- 4 7. Jurisdiction is proper in this court, pursuant to 28 USC §1331 and 1361, 5 USC §701
5 *et seq.*, and 28 USC §2201 *et seq.* Relief is requested pursuant to these statutes.

6 **VENUE**

- 7 8. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action
8 against officers and agencies of the United States in their official capacities, brought
9 in the District where the Plaintiff resides if no real property is involved in the action.
10 Specifically, Plaintiff resides at 268 Douglas Street, #C, Petaluma, California, 94952,
11 and no real property is involved in the instant action.

12 **EXHAUSTION OF REMEDIES**

- 13 9. Plaintiff has exhausted his administrative remedies.

14 **CAUSE OF ACTION**

- 15
16 10. Plaintiff and his wife, Zuo ZHIYING, filed their applications to Register Permanent
17 Resident status (Form I-485) at the California Service Center on November 29, 2005
18 based on an approved Form I-140 (Immigrant Petition for Alien Worker) filed by
19 Plaintiff's employer, Beverly Manor of Petaluma. The principal applicant, Zuo

20 ZHIYING's Form I-485 was approved on August 10, 2006. She received her green
21 card quickly. Plaintiff's application, however, remained pending. (**See Exhibit 1,**
22 **copies of receipt notices for I-485s, copy of approval notice for Zuo Zhiying's**
23 **application, copy of Zuo Zhiying's green card.**)

- 24 11. In December 2006, Plaintiff emailed USCIS to check on the status of his case. A
25 USCIS customer service agent informed him that his case was pending due to the
26 name check. He also learned that his case had been transferred to the Texas Service
27 Center. (**See Exhibit 2, email correspondence from the California Service**
28 **Center.**)

- 1 12. On March 28, 2007, Plaintiff wrote to President George Bush concerning the status of
2 his name check. In a letter dated May 18, 2007, Michael Cannon, Section Chief of
3 the Name Check Program Section of the FBI, responded and indicated that Plaintiff's
4 name check was still pending with the FBI. (**See Exhibit 3, letter from Michael**
5 **Cannon, FBI.**)
- 6 13. In May 2007, Plaintiff went to the San Jose sub office of USCIS and inquired about
7 the status of his application. He was told that it was still pending due to the FBI name
8 check.
- 9 14. In June 2007, Plaintiff sought help from U.S. Senator Barbara Boxer as to the status
10 of his name check. He received a response from Barbara Boxer which enclosed email
11 correspondence with the FBI. The email correspondence from the FBI indicated that
12 his name check was still pending. (**See Exhibit 4, letter from Barbara Boxer with**
13 **email correspondence from the FBI.**)
- 14 15. In June 2007, Plaintiff sent a Freedom of Information Act Request ("FOIA") to the
15 FBI. He received a response indicating that no records were found pertaining to him.
16 Plaintiff. (**See Exhibit 5, letter from the FBI dated July 13, 2007.**)
- 17 16. Based on the responses from USCIS and the FBI, Plaintiff believes that his I-485
18 application has not been adjudicated because of Defendant FBI's failure to complete
19 his name check. At this time, the FBI name check appears to be the only reason for
20 the delay of Plaintiff's I-485 application as Plaintiff does not have a criminal record
21 and there appears to be no other reason why his application has been delayed. (**See**
22 **Exhibit 6, letter from California Department of Justice confirming no criminal**
23 **history record was found.**)
- 24 17. According to the Service Center processing dates, the USCIS Texas Service Center is
25 currently processing I-485 Employment-based adjustment applications filed on or
26 before August 7, 2006. Plaintiff's I-485 application has now remained pending for
27 over two and a half years from the date of filing. (**See Exhibit 7, TSC Processing**
28 **Dates posted on July 16, 2007.**)

- 1 18. Defendants' refusal to act on this application is, as a matter of law, arbitrary and not
2 in accordance with the law. Defendants unreasonably have delayed in and have
3 refused to adjudicate Plaintiff's application for adjustment of status for over two and
4 a half years, from the date of filing, thereby depriving him of the right to a decision
5 on his application and the peace of mind to which Plaintiff is entitled.
- 6 19. Plaintiff has been damaged by the failure of Defendants to act in accord with their
7 duties under the law.
 - 8 a. Plaintiff has had to apply for two subsequent renewals of his work authorization
9 at a cost of approximately \$180.00 for each renewal because his application for
10 permanent residence has not been adjudicated. Because the work authorization is
11 only issued for a year, he has to pay USCIS a fee to renew it if he wishes to work
12 lawfully in the United States.
 - 13 b. Plaintiff had to apply for two Advance Parole document at a cost of \$170.00 each
14 and is about to apply for a third, so that he may travel abroad. He has also had to
15 wait six months for the document to be issued. It has been difficult to plan a trip
16 for business or pleasure with the uncertainty of knowing when he would receive
17 his permission to travel.
 - 18 c. Plaintiff has been further damaged in that he is unable to accrue time to be
19 eligible for naturalization as a citizen of the United States, thus delaying his
20 obtainment of the rights and privileges enjoyed as citizens of the United States.
- 21 20. The Defendants, in violation of the Administrative Procedures Act, 5 USC §701 *et
seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's
22 adjustment application and have failed to carry out the adjudicative functions
23 delegated to them by law with regard to Plaintiff's case.

PRAYER

- 25 21. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff
26 respectfully prays that the Defendants be cited to appear herein and that, upon due
27 consideration, the Court enter an order:

- 1 a. requiring Defendants to expeditiously complete the Security Check on Plaintiff's
- 2 application of adjustment of status;
- 3 b. requiring USCIS to process the adjustment application to conclusion;
- 4 c. awarding Plaintiff reasonable attorney's fees under the Equal Access to Justice
- 5 Act;
- 6 d. granting such other relief at law and in equity as justice may require.

7 Dated this 24th day of July, 2007

8 Respectfully submitted,

9 Geri Kahn /s/
10 Geri N. Kahn
11 Attorney for Plaintiff

1 **CERTIFICATION OF INTERESTED ENTITES OR PERSONS**
2
3

4 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
5 named parties, there is no such interest to report.
6
7

Dated: July 24th 2007

Respectfully submitted,

10 _____
11 Geri Kahn /s/
12 Geri N. Kahn
13 Attorney for Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
LIST OF ATTACHMENTS
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Copies of receipt notices for I-485s, copy of approval notice and green card for Zuo
2. Email correspondence from California Service Center
3. Letter from Michael Cannon, FBI
4. Letter from Barbara Boxer with email correspondence from the FBI
5. Letter from the FBI dated July 13, 2007
6. Letter from California Department of Justice dated June 26, 2007
7. TSC processing dates posted on July 16, 2007